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No. 07-1371

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In The

Supreme Court of the United States

CAMBRIDGE LITERARY PROPERTIES, LTD.,
Petitioner,

v.

W. GOEBEL PORZELLANFABRIK G.m.b.H. & CO. KG., and GOEBEL ART G.m.b.H., d/b/a GOEBEL OF NORTH AMERICA,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF IN OPPOSITION

JOSEPH D. STEINFIELD
PRINCE, LOBEL, GLOVSKY & TYE LLP
100 CAMBRIDGE STREET
SUITE 2200
BOSTON, MA 02114
(617) 456-8000 - PHONE
(617) 456-8100 - FAX

DAVID P. SHOUVLIN
Counsel of Record
JAY A. YURKIW
JACOB H. HUEBERT
PORTER, WRIGHT, MORRIS & ARTHUR LLP
41 SOUTH HIGH STREET
COLUMBUS, OHIO 43215
(614) 227-2000 - PHONE
(614) 227-2100 - FAX

Counsel for Respondents

June 17, 2008

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

RULE 29.6 STATEMENT

Respondent W. Goebel Art G.m.b.H. is a wholly owned subsidiary of Respondent W. Goebel Porzellanfabrik G.m.b.H. & Co. KG. No publicly held corporation owns ten percent or more of W. Goebel Porzellanfabrik G.m.b.H. & Co. KG.

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INTRODUCTION

This dispute is not of sufficient consequence to warrant the Court's attention. It raises no important constitutional or statutory question, nor does it manifest a split in the circuit courts of appeal regarding the application of the Copyright Act and its three-year statute of limitations to ownership claims based on the Act. It is, in essence, simply the most recent attempt by the Petitioner's counsel and sole owner, Henry Herrmann, to challenge the ownership interests in Hummel figurines. This time, instead of bringing claims on behalf of Schmid, Inc. ("Schmid"), a former distributor of Hummel figurines in the United States, Mr. Herrmann advances new and flawed claims on behalf of the Petitioner, Cambridge Literary Properties, Ltd. ("Cambridge"), which Mr. Herrmann personally formed for this exercise.

Cambridge pursues this litigation and asserts co-ownership rights in the Renewal Copyright to *Das Hummelbuch* (and in certain Hummel figurines allegedly derived from that book) despite the fact that Mr. Herrmann, its counsel, previously signed a Consent Order in the United States District Court for the Eastern District of New York on behalf of Schmid, agreeing that Schmid and Respondent W. Goebel Porzellanfabrik G.m.b.H. & Co. KG. (then known as W. Goebel Porzellanfabrik KG.) owned 100% of the Renewal Copyright in *Das Hummelbuch*, the very source of the claims which Cambridge asserts it now has.

On its face, Cambridge's Amended Complaint is fatally stale. It contains over 100 paragraphs detailing

complicated dealings, many of which took place in Europe in 1934 and 1935 among parties long since dead whose intentions are at issue. Cambridge's counsel, Mr. Herrmann, also plays a significant role in the drama set forth in the Amended Complaint, specifically with respect to past disputes with Respondents W. Goebel Porzellanfabrik G.m.b.H. & Co. KG and W. Goebel Art G.m.b.H. (collectively, "Goebel"), the formation of Cambridge, and the purchase of the putative interests Cambridge advances in this case.

The District Court, after ordering limited discovery and allowing Goebel to convert its motion to dismiss into one for summary judgment, agreed with Goebel that the Copyright Act's three-year statute of limitations barred Cambridge's claims, and that Cambridge simply waited too long to assert its claimed ownership rights. The First Circuit Court of Appeals affirmed, explaining: "[Cambridge] may not assert state law claims for accounting or equitable trust without establishing that it is a co-owner. Whether Cambridge is a co-owner in turn depends on the facts of this case, upon the federal Copyright Act."

Cambridge urges this Court to review the decision below on the theory that the decision presents "a true and important conflict between the decisions of the federal courts of appeals." Pet. Brief 9. That theory does not withstand analysis. In truth, the decision below stands alongside every other federal court decision regarding whether the Copyright Act's three-year statute of limitations governs claims of ownership based on the Act. In each such case, the courts have squarely held that the Copyright Act and its three-

year statute of limitations governs such claims. There is no split in the circuits to give life to this appeal.

The case upon which Cambridge relies, *Goodman v. Lee*, 78 F.3d 1007 (5th Cir.), *cert. denied*, 519 U.S. 861 (1996), does not support Cambridge's view that a party may avoid application of the Copyright Act by asserting an accounting claim without first establishing ownership. Even if *Goodman* did support that proposition, no court has followed *Goodman* in the twelve years since the Fifth Circuit issued it. It is now well settled that the Copyright Act's three-year statute of limitations covers claims of ownership, and the First Circuit's decision is just the most recent in a line of cases so holding, following the Second, Fourth, Sixth, Seventh, and Ninth Circuits.

The legal arguments Cambridge submits in this appeal have no abiding legal significance for others. Apart from the bar the Copyright Act imposes, other issues present insurmountable hurdles for Cambridge as well. As the District Court held, if the Copyright Act's statute of limitations does not apply, the relevant Massachusetts statute of limitations would nonetheless bar Cambridge's claims. Moreover, the evidence shows that Cambridge has no legitimate ownership rights, and would further have to overcome the defenses of issue preclusion, laches, and judicial estoppel in order to succeed on its claims. Thus, the present petition is largely an academic exercise.

Accordingly, the Court should deny certiorari because the petition presents no compelling legal issue for the Court to consider, does not reflect a real split in authority for the Court to rectify, is beset with

nettlesome and arcane facts that would have no easy application to any other matter, and is a case that involves an indelicate blurring of the role of counsel.

STATEMENT OF THE CASE

This case is burdened with facts that took place long ago, and for the most part in Europe. The story begins in Bavaria, Germany, where in 1909 Berta Hummel was born. After studying art, Ms. Hummel joined a Franciscan order of nuns at the Convent of Siessen in Germany in 1931 as Sister Maria Innocentia Hummel. In 1934, the Convent published some postcards featuring drawings by Sister Hummel of small children in traditional rural clothing. The postcards attracted the attention of Franz Goebel, who was then the head of Goebel. The postcards also made a favorable impression on the German publisher Emil Fink Verlag ("Fink"). In 1934, Fink and Goebel separately entered into contracts with Sister Hummel and the Convent: in Fink's case, to publish a book of Sister Hummel's drawings to be called *Das Hummelbuch*; and in Goebel's, to make three dimensional porcelain figurines based on Sister Hummel's drawings. These figurines became popularly known as Hummels.

After World War II, Hummel figurines became very popular in the United States. At some point a company located in Massachusetts, Schmid Brothers (which later became Schmid, Inc.), began distributing Hummel figurines in the United States. Thus began a stormy and litigious relationship between Goebel and Schmid over distribution rights and responsibilities that did not conclude until Schmid ceased operations

in 1994. From the late 1960s until at least 1993, Henry Herrmann, counsel for and sole owner of Cambridge, was lead litigation counsel for Schmid in its disputes with Goebel.

Das Hummelbuch

In 1934, Fink published *Das Hummelbuch* in Germany. It contained a collection of Sister Hummel's drawings, to which Fink added captions for the drawings and a preface prepared by an Austrian poet, Margarete Seemann. The contract between Fink and Margarete Seemann made clear that Seemann's contributions to *Das Hummelbuch* were as a work for hire. In 1936, Fink applied for a copyright of *Das Hummelbuch* with the United States Copyright Office. In that application, Fink stated that it was the copyright owner. Fink also noted that Berta Hummel and Margarete Seemann were the names of the authors or translators.

Margarete Seemann died in 1949, leaving her sister Theresia Romanowicz of Vienna, Austria as her heir. Theresia Romanowicz died testate in 1970, providing that whatever interests she had in royalties from Margarete Seemann's works should go to Dr. Alexandrine Cermanovic-Kuzmanovic of Belgrade, Serbia, and Mrs. Maria Romanowicz of Vienna (the "Seemann heirs"). It is from these two heirs that Cambridge contends it received the rights it has asserted in this case. Maria Romanowicz still resides in Vienna. Dr. Cermanovic-Kuzmanovic died, however, after Cambridge commenced this lawsuit and before she could give testimony in this case.

In 1962, Fink filed an Application for Registration of a Claim to Renewal Copyright for *Das Hummelbuch* with the United States Copyright Office ("the Renewal Copyright"). In the Application, Fink identified Berta Hummel as the author, and stated that Margarete Seemann provided a preface and verses. Fink identified itself as "proprietor of copyright in a work made for hire." In 1971, Fink sold its interests in the Renewal Copyright of *Das Hummelbuch* to Goebel.

Disputes Over Intellectual Property Rights

Beginning in the 1960s, Schmid filed a series of lawsuits against Goebel in the United States District Court for the Eastern District of New York. At some point Schmid had purchased some or all of the rights Sister Hummel's heirs had in her drawings and in *Das Hummelbuch*. Schmid used those assigned rights to leverage distribution rights for Hummel figurines in the United States. Mr. Herrmann was counsel for Schmid in these cases, the last of which Mr. Herrmann filed for Schmid in 1990. That last case is of special significance here because it concluded in a Consent Order, which Mr. Herrmann signed in 1992 as counsel for Schmid. The Consent Order provided that Schmid and Goebel owned 100% of the Renewal Copyright to *Das Hummelbuch*.

Given the acrimonious history between the parties, it is unsurprising that the Consent Order did not end the contest between Goebel and Schmid. Within a year after entering into the Consent Order, Schmid filed a petition for bankruptcy in the District of Massachusetts. Goebel thereafter sued Schmid in the District Court of Massachusetts for breach of contact.

Mr. Herrmann, who had entered into a "special relationship" with Schmid as its counsel, filed a personal claim as a creditor in the bankruptcy proceeding for $10,000,000. Mr. Herrmann settled his claim in 1994 for $3,750,000 – essentially money Goebel paid to purchase all existing intellectual and other property rights Schmid had in anything Hummel-related, including all rights to the Renewal Copyright of *Das Hummelbuch*.

Despite this significant payout, Mr. Herrmann was not finished with Goebel. In 1995, he embarked on an effort to locate the heirs of Margarete Seemann because Mr. Herrmann had earlier come to believe that the heirs might have an interest in the Renewal Copyright of *Das Hummelbuch*. In August 1995, Mr. Herrmann formed Cambridge, which shortly thereafter purchased an assignment from Maria Romanowicz. About that same time, Mr. Herrmann also had discussions with Dr. Cermanovic-Kuzmanovic to purchase her putative rights in the Renewal Copyright, but Dr. Cermanovic-Kuzmanovic (to whom Cambridge refers in its petition as "the Belgrade heir") declined to assign her interests until 1999. Mr. Herrmann testified that after obtaining the assignment from Maria Romanowitz in 1995, Cambridge explored opportunities to exploit the assignment commercially. When those efforts proved unsuccessful, Cambridge filed the instant litigation in 2000.

Procedural History

Despite acquiring a putative ownership interest in the Renewal Copyright in 1995, Cambridge did not file

the original Complaint until February 24, 2000, followed by an Amended Complaint on March 21, 2000, naming five defendants: Uhrich Stocke (now deceased), Wilhelm Goebel, Goebel Verwaltungs- und Beteiligungsgesellschaft m.b.H., W. Goebel Porzellanfabrik G.m.b.H. & Co. Kg., and Goebel Art G.m.b.H., d/b/a Goebel of North America. These Defendants moved to dismiss the action based on the lack of personal jurisdiction over them. The District Court granted the Defendants' motion, and Cambridge appealed that decision to the First Circuit Court of Appeals. The First Circuit affirmed the decision in July 2002 with respect to the first three Defendants identified above, but reversed with respect to the Respondents here.

Once the case returned to the District Court, Goebel moved to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure based on three theories: running of the applicable statutes of limitations, issue preclusion, and judicial estoppel. The District Court, with the agreement of the parties, temporarily denied the motion without prejudice, ordered limited discovery on the issues raised in the motion, and directed Goebel to refile its motion as one for summary judgment. Goebel did so on November 22, 2004, raising two defenses: (1) the Copyright Act's three-year statute of limitations, as well as the relevant Massachusetts statute of limitations, barred Cambridge's claims; and (2) the Consent Order, which Mr. Herrmann signed in 1992 and which provided that Schmid and Goebel owned 100% of the Renewal Copyright in *Das Hummelbuch*, barred Cambridge as Mr. Herrmann's alter ego from asserting ownership

claims in the Renewal Copyright on the basis of issue preclusion.

District Court Judge Nancy Gertner referred the Motion to Magistrate Judge Judith Dein. After briefing and a lengthy hearing, Magistrate Judge Dein issued a Report and Recommendation on March 14, 2006, concluding that the Copyright Act's three-year statute of limitations barred Cambridge's claims – and that the relevant Massachusetts statute of limitations barred the claims as well. As for the issue preclusion defense, Magistrate Judge Dein assessed that there were unanswered questions regarding Mr. Herrman's financial relationship to Schmid that prevented entry of summary judgment on that issue at that time. Judge Gertner adopted the Report and Recommendation and entered summary judgment on behalf of Goebel on the statute of limitations defense.

Cambridge appealed that decision to the First Circuit Court of Appeals which, in a decision by Chief Judge Sandra Lynch, affirmed the entry of summary judgment, likewise concluding that the Copyright Act's three-year statute of limitations governed. The court explained: "The congressional intent that the Act's limitations period applies to claims of ownership under the Act may not be undercut by Cambridge's subterfuge." Judge Conrad Cyr dissented. Cambridge then filed its petition for writ of certiorari.

REASONS FOR DENYING THE PETITION

The Court should deny Cambridge's petition for the following reasons: (1) there is no genuine conflict among the circuits on the issues presented by the

petition; (2) there is no important or recurring issue for the Court to review; (3) the Court has previously denied certiorari on the issues presented; (4) this case would be a poor vehicle for reviewing the issues presented; and (5) the First Circuit's decision was correct.

I. There Is No Genuine Conflict Among The Circuits.

The Court should deny the petition because there is no genuine conflict among the circuits regarding the applicability of the Copyright Act's three-year statute of limitations in § 507(b) to co-ownership and accounting claims. The First, Second, Fourth, Sixth, Seventh, and Ninth Circuits have all held that the three-year statute of limitations applies not only to infringement claims, but also to co-ownership claims. *See, e.g., Santa-Rosa v. Combo Records*, 471 F.3d 224, 228 (1st Cir. 2006), *cert. denied*, 127 S. Ct. 2265 (2007); *Merchant v. Levy*, 92 F.3d 51, 56 (2d Cir. 1996), *cert. denied*, 519 U.S. 1108 (1997); *Davis v. Meridian Films, Inc.*, 14 Fed. Appx. 178, 181 (4th Cir. 2001); *Roger Miller Music, Inc. v. Sony/ATV Publishing, LLC*, 477 F.3d 383, 389 (6th Cir. 2007); *Gaiman v. McFarlane*, 360 F.3d 644, 653 (7th Cir. 2004); *Zuill v. Shanahan*, 80 F.3d 1366, 1369-1371 (9th Cir. 1996), *cert. denied*, 519 U.S. 1090 (1997).

There also is no dispute among the lower courts that a claim for accounting of profits is time-barred if the underlying question of copyright ownership is disputed and time-barred under § 507(b) – and that is the situation this case presents. *See, e.g., Merchant*, 92 F.3d at 56 (holding that plaintiff's accounting claim

was time-barred because the underlying ownership claim was time-barred); *Davis*, 14 Fed. Appx. at 181 (same); *Zuill*, 80 F.3d at 1370-71 (same); *Tomas v. Gillespie*, 385 F. Supp. 2d 240, 246 (S.D.N.Y. 2005) (same); *Johnson v. Berry*, 228 F. Supp. 2d 1071, 1077 (E.D. Mo. 2002) (same); *cf. Diamond v. Gillis*, 357 F. Supp. 2d 1003, 1007 (E.D. Mich. 2005) (claim for accounting not time-barred because underlying ownership question not time-barred).

In support of its argument that a conflict nonetheless exists among the circuits, Cambridge relies only on *Goodman v. Lee*, a case which the Fifth Circuit decided over twelve years ago. Cambridge's reliance is misplaced. As the First Circuit explained, the *Goodman* decision is "entirely consistent with the prevailing view that disputed claims about whether there is co-authorship require application of the Copyright Act and the Act's statute of limitations. The portion of the opinion that applied state law is inapposite here, because it dealt with accounting issues that only arose following a proper determination of copyright ownership under the Copyright Act. Cambridge has not cleared that hurdle of establishing ownership." App. 19a-20a.

The plaintiff in *Goodman* timely brought a declaratory judgment claim for co-ownership one year after she learned that the defendants had filed a renewal copyright that made no reference to her co-ownership rights. The issue of copyright ownership was then tried to a jury, which found in the plaintiff's favor. After the jury decided the plaintiff had a co-ownership interest in the copyright, the defendants for the first time raised § 507(b) as a bar to the plaintiff's

claim for accounting of profits. The Fifth Circuit concluded that § 507(b) did not govern the plaintiff's accounting claim under those specific circumstances. *Goodman*, 78 F.3d at 1013.

The Fifth Circuit in *Goodman* did not reach a conclusion regarding whether the three-year statute of limitations in § 507(b) may bar a co-ownership claim. The Fifth Circuit also did not reach a conclusion regarding whether the three-year statute of limitations may bar an accounting claim when the underlying co-ownership claim is time-barred. The Fifth Circuit did not need to reach these issues because the plaintiff brought her claims within one year of when she knew or should have known of the repudiation of her ownership. Thus, there is no irreconcilable disagreement among the lower courts for this Court to resolve.

II. The Petition Raises No Important Or Recurring Issues.

The Court also should deny the petition because it raises no important or recurring issues. There simply is no confusion among the lower courts regarding whether the Copyright Act's three-year statute of limitations in § 507(b) applies to co-ownership and accounting claims. Although the three-year statute of limitations has been in place for over 50 years, Cambridge has cited only one case, *Goodman*, to support its position that the Copyright Act's three-year statute of limitations does not apply to co-ownership and accounting claims. Not only is *Goodman* distinguishable from the facts presented in this case, but lower courts have uniformly and consistently ruled

that the three-year statute of limitations may bar co-ownership and accounting claims where copyright ownership is disputed. *See, e.g., Merchant*, 92 F.3d at 56; *Davis*, 14 Fed. Appx. at 181; *Zuill*, 80 F.3d at 1370-71; *Tomas*, 385 F. Supp. 2d at 246; *Johnson*, 228 F. Supp. 2d at 1077. These rulings have not hindered the effective administration of the Copyright Act or undermined the federal government's interest in having national, uniform rights for copyright owners. Additionally, Cambridge cites no evidence of forum shopping among the lower courts based on their interpretation of § 507(b).[1] Thus, the issues Cambridge raises in this appeal have no general public importance and no abiding legal significance for others.

III. The Court Has Previously Denied Certiorari On The Issues Presented In The Petition.

The Court also should deny the petition because the Court has previously denied certiorari on the issues presented. *See Merchant v. Levy*, 92 F.3d 51, 55-56 (2d Cir. 1996), *cert. denied*, 519 U.S. 1108 (1997); *Zuill v. Shanahan*, 80 F.3d 1366, 1369-1371 (9th Cir. 1996), *cert. denied*, 519 U.S. 1090 (1997); *Goodman v. Lee*, 78 F.3d 1007 (5th Cir.), *cert. denied*, 519 U.S. 861 (1996). The petitioners in those cases made the same types of arguments that Cambridge is making now. For example, in *Merchant*, the petitioner argued, as Cambridge does here, that the three-year statute of

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[1] Ironically, Cambridge concedes that granting certiorari in this case and adopting Cambridge's position would itself lead to forum shopping among the lower courts. Pet. Brief 21-22.

limitations in § 507(b) should apply only to infringement claims and not ownership claims. Citing *Goodman*, the petitioner also argued that the circuits were in conflict as to whether the statute of limitations in § 507(b) or state statutes of limitations should apply to co-ownership claims. *See* Petition for Writ of Certiorari, *Merchant*, 519 U.S. 1109 (No. 96-703), 1996 U.S. Briefs 703, 1996 U.S. S. Ct. Briefs LEXIS 1159, at *1, 18-20. In *Zuill*, the petitioner likewise argued that the circuits were in conflict as to whether § 507(b) applies to co-ownership claims and that the conflict would lead to forum shopping. *See* Petition for Writ of Certiorari, *Zuill*, 519 U.S. 1090 (No. 96-119), 1996 WL 33422075, at *i, 5-9. In *Goodman*, the petitioners also argued that there was a conflict among the circuits regarding whether § 507(b) applies to co-ownership claims. *See* Petition for Writ of Certiorari, *Goodman*, 519 U.S. 861 (No. 96-13), 1996 WL 33422156, at *i.

Since the Court denied certiorari in these cases, the issue of whether the three-year statute of limitations in § 507(b) applies to co-ownership and accounting claims has become well settled, and the decision below is just the most recent in a line of cases holding that it does. Goebel has not found any courts (including within the Fifth Circuit) that follow the reasoning of *Goodman* to conclude otherwise. In short, there have been no changes in this area of the law and no inconsistent rulings by the lower courts that would now warrant this Court's review of issues that it previously declined to consider.

IV. This Case Would Be A Poor Vehicle For Reviewing The Issues Presented In The Petition.

The Court also should deny the petition because this case would be a poor vehicle for reviewing the issues presented.

A. Massachusetts' Statute Of Limitations Also Bars Cambridge's Claims.

Not only does the Copyright Act's three-year statute of limitations bar Cambridge's claims, but the relevant Massachusetts statute of limitations also bars Cambridge's claims. The District Court concluded that even if state law governed Cambridge's claims, Massachusetts' three-year statute of limitations for tort claims would bar Cambridge's claims. App. 88a-91a. The First Circuit did not disturb the District Court's ruling on this issue. Accordingly, even if this Court granted certiorari and ultimately reversed, Cambridge's claims would still be time-barred under state law.

B. Cambridge's Claims Are Highly Fact-Specific.

Cambridge's claims are highly fact-specific. The face of the Amended Complaint, as the First Circuit pointed out, shows that Cambridge's claimed ownership interest in the Renewal Copyright is in controversy and that the ownership interest must be decided under federal copyright law. App. 13a-14a. Yet, unlike the plaintiffs in nearly all of the cases discussed above, Cambridge "attempted to avoid"

application of § 507(b) "by the stratagem of failing to ask for a declaration of ownership as a method of avoiding the federal limitations period for an ownership claim governed by the Act." App. 18a.

As part of its strategy, Cambridge contends that the original 1936 Certificate of Registration in the U.S. Copyright Office for *Das Hummelbuch* constitutes *prima facie* evidence of the ownership interest of Margarete Seemann and the Seemann heirs, through which Cambridge claims its ownership interest. Cambridge makes this contention even though neither the original Certificate of Registration nor the 1962 Renewal Copyright identifies Ms. Seemann as a copyright owner, and the face of the Application for Renewal Copyright identifies a German publisher, Fink, as the "proprietor of copyright in a work made for hire."[2] Thus, Cambridge's strategy and novel theory would limit the Court's analysis of the issues presented. Cambridge has deliberately distinguished this case from those cases in which a declaratory judgment was sought. Pet. Brief 27.

V. The First Circuit's Decision Was Correct.

The Court also should deny the petition because the First Circuit correctly held that the Copyright Act's three-year statute of limitations barred Cambridge's

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[2] As a work made for hire, the Seemann heirs had no ownership rights in the Renewal Copyright to assign to Cambridge. *See Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 737 (1989); *Playboy Enters. v. Dumas*, 53 F.3d 549, 554-57 (2d Cir.), *cert. denied*, 516 U.S. 1010 (1995).

claims. This case does not involve a dispute between admitted co-owners of a copyright. Cambridge cannot succeed on its claims without first proving that it has an ownership interest in the Renewal Copyright of *Das Hummelbuch* under the provisions of the Copyright Act. Among other things, Cambridge must show that *Das Hummelbuch* is a "joint work" and not a "work for hire" under §§ 101 and 201(a) of the Copyright Act, and that the Seemann heirs obtained an interest in the Renewal Copyright to *Das Hummelbuch* under the renewal provisions set forth in Section 24 of the Copyright Act of 1909. Because the initial question of copyright ownership is governed by the Copyright Act, the Act's statute of limitations must apply. As stated by the First Circuit, "[i]t would be anomalous and, we think, contrary to congressional language and intent not to apply the Act's limitations period when the Act governs the question of ownership interest." App. 14a.

Cambridge contends that the First Circuit erred on this point because Congress intended § 507(b) to apply only to infringement actions and statutory royalty claims, § 507(b) uses the words "maintained under" instead of "arising under," and Cambridge asserted a claim for accounting without bringing a separate claim for declaration of co-ownership rights under the Copyright Act these arguments are without merit.

Moreover, Cambridge's reasoning is contrary to the general public policy favoring statutes of limitations, and specifically to Congress' goal in enacting a federal statute of limitations for all civil actions relating to copyrights. This Court has explained the important role that statutes of limitations play in the law:

> Statutes of limitation, which "are found and approved in all systems of enlightened jurisprudence," represent a pervasive legislative judgment that it is unjust to fail to put the adversary on notice to defend within a specified period of time and that "the right to be free of stale claims in time comes to prevail over the right to prosecute them." These enactments are statutes of repose; and although affording plaintiffs what the legislature deems a reasonable time to present their claims, they protect defendants and the courts from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise.

United States v. Kubrick, 444 U.S. 111, 117 (1979) (internal citations omitted).

Following the general public policy supporting statutes of limitations and the Constitution's express grant of power to secure for authors copyrights for "limited times," U.S. Const. art. I, § 8, cl. 8., Congress amended the 1909 Copyright Act in 1957 to provide for a uniform three-year statute of limitations for all civil copyright actions. P.L. 85-313. Contrary to Cambridge's contention, Congress did not limit the scope of this statute of limitations to infringement actions. As explained in the legislative history, "the purpose of the bill [was] to provide a statute of limitations with respect to *civil actions relating to copyrights*." 1957 S. Rep. No. 85-1014, at 1961 (1957) (emphasis added). Congress passed the bill to provide

a uniform statute of limitations throughout the United States for actions relating to copyrights and to prevent forum shopping:

> In civil copyright actions at present the courts apply the law of the state in which the action is brought with respect to the limitation on commencement of action. This leads to quite a diversity of statutes of limitations with regard to copyrights. Some courts have applied the state statute of limitations pertaining to torts to civil actions brought under the copyright statutes, other courts have applied the state statute of limitations pertaining to conversions, injuries to personal rights, injuries to property rights, trover, liabilities not under contract or other general provisions. These interpretations naturally can result in a wide divergence of time periods with respect to the limitation on the commencement of civil copyright actions. This in turn also permits "forum shopping" by claimants. * * * The Committee notes, however, that irrespective of the length of a period it is highly desirable to provide a uniform period throughout the United States.

Id. at 1962.

When Congress enacted the Copyright Act of 1976, it expounded on the importance of national uniformity with regard to copyright law:

> One of the fundamental purposes behind the copyright clause of the Constitution, as shown in Madison's comments in the Federalist, was to

> promote national uniformity and to avoid the practical difficulties of determining and enforcing an author's rights under the differing laws and in the separate courts of the various States. Today, when the methods for dissemination of an author's work are incomparably broader and faster than they were in 1789, national uniformity in copyright protection is even more essential than it was then to carry out the constitutional intent.

H.R. Rep. No. 94-1476 (1976), *as reprinted in* 1976 U.S.C.C.A.N. 5659, 5745.

Consistent with this goal, Congress left the three-year statue of limitations intact: "Section 507, which is substantially identical with section 115 of the present law, establishes a three-year statute of limitations for both criminal proceedings and civil actions." *Id.* at 5780. Section 507(b) thus provides: "*No civil action* shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued." 17 U.S.C. § 507(b) (emphasis added).[3]

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[3] Cambridge's reliance on the legislative history for the Copyright Act of 1976 to argue that the Act does not provide for accounting actions between copyright co-owners is misplaced under the facts of this case. Pet. Brief 10. The passage to which Cambridge cites described a situation where there is a "joint work" and there is no dispute about co-ownership. H.R. Rep. No. 94-1476 (1976), *as reprinted in* 1976 U.S.C.C.A.N. 5659, 5736. Here, in contrast, Cambridge's claim of ownership is "hotly contested" by Goebel and is maintained under the provisions of the Copyright Act. App. 3a-4a. As explained by the First Circuit, "[i]f co-ownership were

In applying the plain language of § 507(b) to co-ownership claims, the federal courts of appeals have uniformly and consistently held that the three-year statute of limitations applies where copyright ownership is disputed and the issue of ownership must be determined under copyright law. *See, e.g., Santa-Rosa*, 471 F.3d at 228; *Merchant*, 92 F.3d at 56; *Davis*, 14 Fed. Appx. at 181; *Roger Miller Music*, 477 F.3d at 389; *Gaiman*, 360 F.3d at 653; *Zuill*, 80 F.3d at 1369. Scholars also have concluded that the three-year statute of limitations should apply to ownership claims. *See, e.g.*, 3 MELVILLE NIMMER & DAVID NIMMER, NIMMER ON COPYRIGHT § 12.05[C][2], at 12-150.18 (2008); Donald E. Biedsman, *Limitations on Claims of Ownership and Claims for Royalties*, 20 HASTINGS COMM. & ENT. L.J. 1, 9-10 (1997). *See also* Note, *Accountability Among Co-Owners of Statutory Copyright*, 72 HARV. L. REV. 1550, 1564 (1959) (analyzing the three-year statute of limitations as enacted in 1957).

Federal courts have further applied the three-year statute of limitations to accounting claims where the underlying ownership claim is time-barred. *See, e.g., Merchant*, 92 F.3d at 56; *Davis*, 14 Fed. Appx. at 181; *Zuill*, 80 F.3d at 1370-71; *Tomas*, 385 F. Supp. 2d at

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conceded and the only question was a claim for accounting of profits from the other joint owner, then Cambridge could argue the suit was only for an accounting of profits under state law. *Gaiman*, 360 F.3d at 652. But under a long line of federal cases, Cambridge must first establish that it is a co-owner, and the answer to that lies in the application of the Copyright Act and subjects that claim to the Act's statute of limitations. *See id.* at 652-53." App. 17a-18a.

246; *Johnson*, 228 F. Supp. 2d at 1077. The application of the three-year statute of limitations "promotes the principles of repose integral to a properly functioning copyright market." *Merchant*, 92 F.3d at 57. "It is inequitable to allow the putative co-owner to lie in the weeds for years after his claim has been repudiated, while large amounts of money are spent developing a market for the copyrighted material, and then pounce on the prize after it has been brought in by another's effort." *Zuill*, 80 F.3d at 1371.

Here, not only did the facts underlying Cambridge's claimed ownership interest in the Renewal Copyright take place many years ago in Europe among parties long since dead, but Cambridge itself delayed filing suit for five years after it acquired its putative ownership interest in the Renewal Copyright. Despite its delay in filing suit, Cambridge attempts to draw a semantic distinction between a civil action "arising under" the Copyright Act and one being "maintained under" the Act to argue that its claims are not time-barred.[4] According to Cambridge, "maintained" is a narrower term and thus § 507(b) applies only to claims for infringement and not to claims for co-ownership. The distinction Cambridge proposes does not save its claims. As the First Circuit correctly reasoned, Cambridge's claims are time-barred because Cambridge contends that it is a co-owner of the Renewal Copyright under the provisions of the

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[4] Goebel is not aware of any case other than *Goodman* in which such a distinction has been drawn. As discussed above, *Goodman* is distinguishable from the facts of this case.

Copyright Act: "The controversy over Cambridge's copyright interests directly involves Seemann's authorship status and her initial ownership of the copyright in *Das Hummel-Buch*, as well as the effect of various registration documents and transfers. The Copyright Act clearly covers these issues. *See* 17 U.S.C. §§ 101, 201, 204-05, 410." App. 20a.

Cambridge's construction of the three-year statute of limitations in § 507(b) would lead to forum shopping and would "impede Congress' paramount goal in revising the 1976 Act of enhancing predictability and certainty of copyright ownership." *Community for Creative Non-Violence*, 490 U.S. at 749. If Cambridge's position were adopted, there would be virtually no uniformity and consistency with respect to the time a plaintiff would have to assert its co-ownership rights. Depending on the theory of recovery and jurisdiction selected, a plaintiff could delay for years asserting a claim for co-ownership in a copyrighted work. For example, a party in New York alleging co-ownership and an accounting could wait six years, *see Glynwill Invs. N.V. v. Prudential Secs., Inc.*, No. 92 Civ. 9267, 1995 WL 362500, *3 (S.D.N.Y. June 16, 1995); a party in Illinois five years, *see Greenberg v. Broad Capital Assocs. Inc.*, No. 02 C 6116, 2002 WL 31269617, *3 (N.D. Ill. Oct. 9, 2002); and a party in Ohio ten years, *see Timmons v. Timmons*, No. 98 CA 25, 1998 Ohio App. LEXIS 6355, *8 (Ohio Ct. App. Dec. 22, 1998).

The absence of uniformity and consistency would lead to confusion and uncertainty among copyright owners and result in substantial unfairness, as varying statutes of limitations and accrual standards would apply depending on where the parties initiated

their claims. Congress did not intend such a result. Thus, the First Circuit correctly concluded that the Copyright Act's three-year statute of limitations barred Cambridge's claims. No error was committed that warrants this Court's review.

CONCLUSION

For the reasons set forth above, the Court should deny the petition for a writ of certiorari.

Respectfully submitted,

David P. Shouvlin (BBO# 555779)
Jay A. Yurkiw (Ohio Bar #0068143)
Jacob H. Huebert (Ohio Bar#0078562)
PORTER, WRIGHT, MORRIS & ARTHUR LLP
41 South High Street
Columbus, Ohio 43215
(614) 227-2000 - Phone
(614) 227-2100 - Fax

Joseph D. Steinfield (BBO# 478680)
PRINCE, LOBEL, GLOVSKY & TYE LLP
100 Cambridge St., Suite 2200
Boston, MA 02114
(617) 456-8000 - Phone
(617) 456-8100 - Fax